

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BOB MCCLANAHAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-05-382-M
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	


ORDER

On February 28, 2007, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this action brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1) and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) for violations of plaintiff's Eighth and Fourteenth Amendment rights. The Magistrate Judge recommended that defendant Mier's motion to dismiss [docket no. 39] be treated as one seeking judgment pursuant to Federal Rule of Civil Procedure 56(c) and that such motion be denied. The parties were advised of their right to object to the Report and Recommendation by March 20, 2007. A review of the file reveals no objection has been filed.

Upon de novo review, the Court:

- (1) ADOPTS the Report and Recommendation issued by the Magistrate Judge on February 28, 2007, and
- (2) DENIES defendant Mier's motion to dismiss [docket no. 39], which is treated as a motion for summary judgment.

IT IS SO ORDERED this 4th day of April, 2007.


VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE